

# HOUSE . . . . . No. 1380

By Mr. Cabral of New Bedford, petition of Bruce E. Tarr and others relative to the disposition of abandoned vessels. Environment, Natural Resources and Agriculture.

## The Commonwealth of Massachusetts

### PETITION OF:

Bruce E. Tarr	Emile J. Goguen
Robert M. Koczera	John W. Scibak

In the Year Two Thousand and Five.

### AN ACT RELATIVE TO ABANDONED VESSELS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter ninety-one of the General Laws, as  
2 appearing in the 2002 Official Edition, are hereby amended by  
3 striking sections thirty-eight, thirty-nine, forty, forty-one, forty-  
4 two, forty-three, and forty-nine.

1 SECTION 2. Section one of chapter ninety-one is hereby  
2 amended by adding the following in the definition of “Depart-  
3 ment”:— After section “forty,” add “forty-one A, forty-one B,”.

1 SECTION 3. Said chapter ninety-one is hereby further  
2 amended by adding the following sections:

3 Section 38. DEFINITIONS

4 For the purposes of sections thirty-eight to forty-eight, inclu-  
5 sive, the following terms shall have the following meanings:

6 “Certificate of Number”, a document issued by the director of  
7 the division of law enforcement, upon application therefore,  
8 stating the name and address of the owner of, and the number  
9 awarded to a vessel subject to this chapter, except such vessels,  
10 other than livery boats, owned by a manufacturer of or dealer in  
11 boats.

12 “Certificate of Documentation Number”, a document issued by  
13 the United States Coast Guard, upon application therefore, stating  
14 the name and address of the owner of commercial vessels, and the  
15 number awarded to a vessel subject to this chapter.

16 “Claimant”, the commonwealth, its political subdivisions, or  
17 any person or entity, public or private, which desires to acquire  
18 title to an abandoned vessel;

19 “Department”, the department of conservation and recreation  
20 acting through the division of water supply protection;

21 “Director”, the director of the office of law enforcement within  
22 the executive office of environmental affairs;

23 “Identification number”, the number awarded to a vessel sub-  
24 ject to this chapter and upon approval of an application for a cer-  
25 tificate of number or certificate of documentation number;

26 “Lienholder”, any person or entity holding a perfected security  
27 interest;

28 “Office”, the office of law enforcement within the executive  
29 office of environmental affairs;

30 “Operator”, a person who operates or who has a charge of the  
31 navigation or use of a vessel;

32 “Owner”, a person, other than a lienholder, holding a vessel or  
33 the title to a vessel. The term includes a person entitled to the use  
34 or possession of a vessel subject to an interest of another person,  
35 reserved or created by agreement and securing payment or perfor-  
36 mance of an obligation but shall exclude a lessee under a lease not  
37 intended as a security interest;

38 “Removal costs”, any and all costs associated with the removal  
39 or destruction of any vessel from land and /or water and shall  
40 include the reimbursement of any or all costs incurred by the  
41 claimant in the course of acquiring title to an abandoned vessel;

42 “Security interest”, an interest which is reserved or created, by  
43 an agreement which secures payment or performance of an obliga-  
44 tion and is valid against third parties generally;

45 “Vessel”, a boat and / or any watercraft of every description,  
46 motorized and non-motorized, except a seaplane on the water,  
47 used or capable of being used as a means of transportation on  
48 water, including but not limited to documented boats and ships,  
49 flat bottomed boats, barges, scows and rafts; and including all  
50 equipment, modes of power, and all property aboard the vessel;

51 Section 39. It shall be unlawful for any person to willfully  
52 abandon any vessel to or upon public land or waters of the Com-  
53 monwealth or to or upon any private property or the water imme-  
54 diately adjacent thereto without the consent of the official  
55 designated by law to have jurisdiction over such public land or  
56 waterway, or the owner or other person in charge of the private  
57 property. A vessel which has remained moored, grounded, or oth-  
58 erwise attached or fastened upon any public land or waterway or  
59 any private property without such consent for a period of more  
60 than 90 days shall be prima facie evidence of such abandonment.

61 Any vessel that the owner, operator, or lienholder has placed at  
62 a storage or repair facility, which is subject to the provisions of  
63 section fourteen of chapter two hundred and fifty-five or which is  
64 subject to the provisions of sections one hundred seventy-nine or  
65 one hundred eighty of chapter six; sections twenty-six to twenty-  
66 seven D, inclusive, of chapter nine; section sixty-three of chapter  
67 ninety-one; or any other applicable federal or state law, shall not  
68 be considered an abandoned vessel.

69 Section 40.

70 Any claimant wishing to obtain title to an abandoned vessel, as  
71 defined hereunder, may apply to the office for title under the pro-  
72 visions of this section. (a) If there is more than one claimant, the  
73 office shall give preference for the claim in the following order:

74 (i) the department;

75 (ii) the office;

76 (iii) another department of agency of the commonwealth;

77 (iv) the municipal government of jurisdiction where the vessel  
78 lies;

79 (v) the United States government or any of its departments or  
80 agencies;

81 (vi) private parties.

82 (b) In no event shall this preference be granted if emergency  
83 conditions exist and the procedures under this section would jeop-  
84 ardize navigation, public health, or safety. In the event that there  
85 is more than one equal claimant, the office shall hold an auction,  
86 and the title, subject to valid liens as provided for hereunder, shall  
87 go to the highest bidder.

88 (c) Before applying to the office for title under section 40A, the  
89 claimant must first comply with the following:

90 (i) If a vessel has any identification number, registration  
91 number, equipment numbers, certificate of documentation number,  
92 certificate of number, or other means of identification, the  
93 claimant shall contact the office to determine if the vessel has  
94 been stolen.

95 ii) If after thirty days the office determines that the vessel is  
96 abandoned and not stolen, the claimant shall, if possible, secure  
97 the owner's last known address and the address of any lienholder  
98 appearing on record. Said claimant shall notify the owner, any  
99 lienholder of record, the department, the Board of Underwater  
100 Archaeological Resources, and the Massachusetts Historical Com-  
101 mission by certified first class mail, return receipt requested, to  
102 the owner's, lienholder's, or other required party's address of  
103 record.

104 (iii) If the owner of record does not reply within thirty days, the  
105 claimant shall cause a notice to appear for three consecutive days  
106 in a newspaper of general circulation published in the county, city,  
107 or town where the vessel is located, where the owner of the boat  
108 has its address, or if the owner's name and address are unavail-  
109 able, where a lienholder has its place of business. The notice  
110 given pursuant to this section shall contain the following:

111 (1) a description of the vessel, including any identifying num-  
112 bers;

113 (2) a description of the location where the vessel is situated;

114 (3) a statement informing the owner and lienholder of their  
115 right to reclaim the vessel within thirty days subject to rights of  
116 any other lienholder;

117 (4) a statement that failure to claim the vessel will constitute a  
118 waiver of all rights, title, and interest in the vessel; and

119 (5) a statement that if ownership or lienholder interest is not  
120 claimed and the vessel is not removed within thirty days after the  
121 owner, the owner's agent, or employee signs the return receipt or  
122 within ninety days of the last day of notice by publication,  
123 whichever is later, the claimant may apply to the office for title to  
124 the vessel.

125 (d) If the claimant cannot identify any vessel owner or ascertain  
126 the owner's address after a reasonable search of record, and if no  
127 lienholder appears on record, the claimant need not issue the  
128 notice required by subsection (c)(ii).

129 Section 40A.

130 If the owner or lienholder fails to claim the vessel within thirty  
131 days after the return receipt is received by the claimant or after the  
132 last day of notice is given by publication, whichever is later, and if  
133 the commonwealth is not the owner pursuant to section one hun-  
134 dred seventy-nine or one hundred eighty of chapter six; or sec-  
135 tions twenty-six to twenty-seven D, inclusive, of chapter nine; and  
136 if the United States is not the owner pursuant to federal law or  
137 regulation, the claimant may apply to the office for a title, subject  
138 to any lien which is valid and enforceable under any other statute,  
139 including section nine of chapter one hundred six. (a) Such appli-  
140 cation must include the following:

141 (i) a notarized affidavit by the claimant stating that the vessel  
142 has been abandoned for at least ninety days, that all notice  
143 requirements under this chapter have been met, and that the vessel  
144 is not subject to sections one hundred seventy-nine or one hundred  
145 eighty of chapter six; or, sections twenty-six to twenty-seven D,  
146 inclusive, of chapter nine; or, the requirements of section sixty-  
147 three of chapter ninety-one, or any other applicable state or fed-  
148 eral law or regulation;

149 (ii) a copy of the letter, if sent, to the identified owner and lien-  
150 holders and accompanying return receipts. In the alternative, the  
151 claimant may supply a detailed explanation of the unsuccessful  
152 steps taken to identify the owner and any lienholder and to secure  
153 the address of the owner or any lienholder, including any returned  
154 notices; and

155 (iii) in the case of notice by publication, original copies of the  
156 notice as published.

157 (b) The office shall certify that the claimant has met the  
158 requirements of this section, and such certification shall be  
159 included with the records of the granting of the title.

160 Section 41. Except as otherwise set forth in this chapter, or in  
161 section one hundred seventy-nine or one hundred and eighty of  
162 chapter six, or sections twenty-six to twenty-seven D, inclusive,  
163 of chapter 9, or any other applicable state or federal law, the office  
164 is hereby given the authority to grant title to a vessel, and any  
165 contents therein, subject to any valid, perfected security interests,  
166 to the claimant. Upon certification as required in section forty A,  
167 and upon payment of any fees or taxes due, the office shall issue

168 the claimant title to the vessel. All costs incurred in transferring  
169 title shall be borne by the applicant. Should such person wish to  
170 operate such vessel he or she shall, if required by law, register  
171 said vessel with the office in accordance with chapter ninety B, as  
172 amended, or document the vessel under the applicable federal  
173 requirements.

174 Section 41A. After receiving title, the claimant may remove the  
175 vessel, destroy it, or sell it. Removal costs shall be borne by the  
176 previous owner if that owner has been identified, and shall be  
177 borne by the claimant if the previous owner cannot be identified.  
178 If the new owner intends to destroy or otherwise dispose of said  
179 vessel, he or she shall report such intention to the department and  
180 office at least fifteen days prior, supplying all details of the demo-  
181 lition or other disposition, including, but not limited to, the place  
182 of demolition, any materials or contracts for the demolition, any  
183 required permits, and the intended disposition of the vessel or its  
184 materials. The department shall immediately notify the office of  
185 the disposal or destruction of any vessel.

186 Section 41B. If a wrecked, sunken or abandoned vessel, or any  
187 unlawful or unauthorized structure or thing, is deposited or suf-  
188 fered to remain in the tide waters of the commonwealth, and if the  
189 department deems it is, or is liable to cause or become, an  
190 obstruction to the safe and convenient navigation or other lawful  
191 use of such waters, the department shall move it or cause it to be  
192 removed, after which time it may become a claimant and apply for  
193 title from the office, complying with the provisions of sections 40,  
194 40A, 41, and 41A of this chapter, and

195 For a vessel that has been abandoned, and that does not pose an  
196 obstruction to the safe and convenient navigation or other lawful  
197 use of such waters, and for which no other claimant commences  
198 proceedings under this chapter within sixty days of the department  
199 having notice of said vessel, the department shall become a  
200 claimant and apply for title from the office, complying with the  
201 provisions of sections 40, 40A, 41, and 41A.

202 Section 42. Any person who abandons a vessel shall be pun-  
203 ished by a fine of not more than ten one thousand dollars, except  
204 in any case, where, by reason of accident, emergency, errors of  
205 navigation, or in order to prevent loss of life or the sinking of a  
206 vessel, scow, lighter or other structure, such vessel, scow, lighter

207 or structure is or has been grounded within the limits of any  
208 harbor or on any of the shores of the commonwealth. Any person  
209 who obtains or attempts to obtain title to a vessel through fraudu-  
210 lent means shall be punished by a fine of not more than one thou-  
211 sand dollars.

212 Section 42A. The department and the office shall promulgate  
213 such rules and regulations as necessary to carry out the provisions  
214 of sections thirty-eight to forty-two, inclusive.

1 SECTION 4. Chapter ninety-two, as so appearing, is hereby  
2 amended by repealing sections seventy-two and seventy-three.